

Court of Appeals, State of Michigan

ORDER

John B Lizza v Yamaha Motor Corp USA

Docket No. 287274

LC No. 2005-069097-NI

Deborah A. Servitto
Presiding Judge

Mark J. Cavanagh

Kathleen Jansen
Judges

The Court orders that the delayed application for leave to appeal is GRANTED, limited to the issues raised in the application. MCR 7.205(D)(4). The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(D)(3).

The motion to dismiss pursuant to MCR 7.211(C)(2) is DENIED.

The motion to file a late answer is GRANTED.

Servitto, J., would, pursuant to MCR 7.205(D)(2) and in lieu of granting the delayed application for leave to appeal pursuant, vacate the March 25, 2008 order regarding distribution of wrongful death proceeds and remand the matter to the trial court for reconsideration of the distribution of the wrongful death proceeds without factoring in defendant's alleged fault. The clear and unambiguous language of MCL 600.2922(6)(d) does not provide for consideration of the fault of a person entitled to proceeds for the decedent's death. See *DaimlerChrysler Corp v State Tax Comm'n*, 482 Mich 220, 247; 753 NW2d 605 (2008). In determining the amount of wrongful death proceeds to allocate to defendant, the trial court erroneously considered in part that defendant permitted his son to operate the motorbike without proper training and safety equipment.



A true copy entered and certified by Sandra Schultz MengeI, Chief Clerk, on

JAN 22 2009
Date

Sandra Schultz MengeI
Chief Clerk